Defending Humanity

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Since we are in New Hampshire, it seems especially appropriate that I begin with my favorite story of one of New Hampshire’s most loved sons: Theodore Geisel, otherwise known as Dr. Seuss. The story is called Horton Hears A Who. The story is about an elephant named Horton who, because of his extraordinarily large ears, becomes aware that a community of microscopic people called Whos live on a dust speck that sits atop the blossom of a single flower.

Horton’s enhanced auditory ability is, of course, a metaphor for a heightened moral sensitivity. Once Horton is aware that people live on the dust speck, he acts accordingly, doing everything within his power to protect them.

The other animals in the jungle are not able to hear the voices of the Whos and consequently do not recognize that persons live on the dust speck on the flower. They find Horton’s way of relating to the dust speck—and insistence that others act similarly—offensive and bizarre. They mock Horton. They abuse him. They think him insane. They take the blossom on which the Whos live on a dust speck and hurl it into a valley of billions of identical blossoms, endangering the lives of the Whos and forcing Horton, the Whos advocate and protector, to endure countless hours of difficult and tedious work in finding them.

Finally, in the story’s climax, the other animals assault and imprison Horton, intent on boiling the dust speck on which the Whos live. But this is a story by Dr. Seuss, and at the last crucial moment the Whos—whom Horton has been exhorting with the slogan “If you only make yourselves heard you don’t have to die”—manage to organize themselves to speak one unmistakably audible “We are here! We are here!”

The other animals hear the voice, recognize that Horton was right all along, and now aware of the personhood of the Whos change their behavior accordingly.

I start with that children’s story, not to be funny or sentimental, but because I think it powerfully conveys, in a simple and beautiful way, the central idea on which I will reflect: the idea of human rights. That is to say, the unique, the profound, the rarest, the most treasured of all rights. The human rights movement is, I believe, and I hope others will believe, the idea of the Whos—of seeing the dust speck on which the Whos live.

As I understand it, the ferverino is a deliberate preaching to the choir. In English, the metaphor of preaching to the choir is invariably pejorative, but I do not see why that is necessarily so. Even the choir—the true believers, the already converted—sometimes grows tired and discouraged, is sometimes tempted to despair. The point of the ferverino is to act as a moral call to arms, to inspire and console, to put into words and thereby make present the ideals we cherish and in which we believe. And in that act of making present, the hope is that we will remember how much those ideals mean to us and be strengthened in our commitment to them.

I augment my reading of the Universal Declaration with two other international agreements: the International Covenant on Economic, Social, and Cultural Rights; and the International Covenant on Civil and Political Rights, both proposed in 1966 but entered into force in 1976.

Instead, the rhetorical form I have chosen is one I encountered as a Jesuit novice. That form my master of novices called the “ferverino.”

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The guiding premise of the Universal Declaration is found in the first paragraph of its preamble: “the recognition of the inherent dignity and of the equal and inalienable rights of the human family is the foundation of freedom, justice, and peace in the world.”

The articles of the Universal Declaration then go on to enumerate those rights, including the freedoms with which we are familiar from the first ten amendments to the U.S. Constitution, but also including rights to health care, education, a just living wage, and social security, the sorts of economic and social rights regrettably not secured by the Constitution of the United States.

The Universal Declaration is a beautiful document, even if—as with so many of law’s best promises—its strength has been more in preserving aspirations than providing enforceable legal rights. I want, however, to dwell on three fundamental implications of the idea of human rights and their relevance to the work of public interest lawyers.

First, human rights imply a shared human nature. Second, people are not things and should not be treated as things. And third, defending the human rights of others is itself a constituent part of leading a good and happy human life.

The Universal Declaration takes as its empirical premise that all human beings share certain critical attributes and needs. Without that empirical premise, the Declaration, indeed the concept of human rights itself, is meaningless. That set of common attributes and needs I will call shared human nature.

In using the term “human nature,” I realize I am courting controversy. On the political right, “human nature” is a term fraught with specific teleologies of what constitutes the proper end of human life. Defenders of market economics, various social Darwinist schemes, capital punishment, and all sorts of harsh and punitive forms of social organization will invoke this thing called “human nature” to justify the oppression and subordination of other human beings.

On the left, sensitivity to cultural diversity, opposition to anything that smacks of essentialism, and an at times excessive form of social constructionism make the idea of a shared human nature singularly unwelcome.

Nevertheless, I will insist on using the term in the following sense: by “human nature” I mean the shared attributes and needs that all human beings possess regardless of gender, race, creed, national origin, sexual orientation, disability, or any other accident of time or place. The Universal Declaration and subsequent covenants identify some of those common human physical needs: food, shelter, medical care; but also psychological needs for education, relationships, self-determination, and that quality in human beings that our own legal tradition calls “liberty.”

From the empirical reality of human nature derive two hopeful corollaries. First, oppression always requires work because it meets the resistance of human nature. That seems so obvious, but sometimes when we are struggling against oppression it may seem that iniquity is effortless, while justice requires impossible exertions of energy to bring about and sustain.

Don’t believe it. Wherever human beings are denied the things they need for flourishing—food, shelter, work, education, liberty, or dignity—they will act out. That is why oppressive regimes must invest so much time, energy, money, and resources in the instruments of collective deception and social coercion: propaganda, the military, and the police. In the United States, it is why our continued neglect of the basic human needs of tens of millions of people goes hand-in-hand with a massively expanded and still expand-
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boats. But the sorts of people public interest lawyers serve are drowning in that tide.

While macroeconomic realities may seem remote from our work, we must acknowledge that late twentieth century Capitalism is the context for all we do. It must be reckoned with. To the extent that we see ourselves as defending human rights, we have no choice but to resist Capitalism’s drive to commodify everything. That drive is aimed at nothing else than eradicating the qualitative moral differences between our treatment of people and things.

I now arrive at my third and last point. In our work to protect the human rights of our clients, we are making a good and happy human life for ourselves.

As I grow ever closer to my fortieth birthday, I become ever more convinced that there is really only one important question from which all others flow: In what does a good human life consist and how do we go about living such a life? That question was much on the mind of Socrates. It was the question he so relentlessly and persistently and infuriatingly put to the businessmen, priests, politicians, generals, rhetoricians, and intellectuals of his day.

The Universal Declaration gives a partial answer to the first part of that question: freedom, food, family, education, safe and decent work at a living wage. What may not be so apparent is that in fighting to secure those things—those human rights—for other human beings, public interest lawyers are answering Socrates’ question, for themselves.

Our lives are the only things that are completely ours. The kind of life we make is the most important work, the single most significant project we will ever undertake. One of the things that makes me saddest when I talk to law students and lawyers is the recurring impression I get that they have lost a sense of their own agency, i.e., the sense that their lives are theirs to make of what they will. Because of that loss, people who are among the most gifted and privileged in the world instead live with a sense of drastically constricted possibilities of what they can do with their lives.

I understand how frightening it can be. How crushing the burden of debt can seem. Still, I want to cry at the failure of imagination and loss of promise represented by all those law students—and there are thousands of them—who enter law school dreaming of doing great things in the pursuit of justice, only to find themselves defending corporations.

I suppose what I am trying to say is that in my own life as I have struggled with the question of what makes a good and happy human life, I have become ever more convinced that struggling to secure the conditions for a decent human life for others is a large part of the answer.

I know it is not easy. Just as the Universal Declaration of Human Rights marks its 50th anniversary, this year I mark the 10th anniversary of my departure from the Society of Jesus, a Roman Catholic religious order probably better known as “the Jesuits.”

I had known much happiness as a Jesuit. By most reports, I was very good at being a Jesuit. But while teaching high school seniors, I became involved in a controversy surrounding one of my students. The student had been subjected to an official inquiry, a temporary suspension, and threats of not being graduated with class for painting and displaying a picture for which he had received approval from the chairperson of the school’s art department. Unfortunately, for my student, the picture caused a controversy in the school community and greatly upset the school’s president.

The details of the story are too complex and too many to relate here. Suffice it to say that the student came to me to protest the way he had been treated and to ask for my help. I was warned by fellow Jesuits that the consequences of my advocacy might be dire. They were right.

I took up my student’s cause, protesting to both faculty and administration about the unfairness of the process to which my student was subjected. The student emerged without further harm. The investigative process was ended, no further disciplinary action was taken, and he graduated with his classmates. But my advocacy on my student’s behalf had so angered and alienated my religious superior that my life as a Jesuit came to an end.

I cannot tell you what it was like for me on the June day in 1988 when I left the Jesuits. For six years it had been my whole life. Being a Jesuit had become integral to my identity. Losing that was not unlike getting a nasty divorce, losing your job, and being evicted all on the same day. In one fell swoop I lost my home, my job, my community, and a large part of my identity.

I had very little money and very little idea of what I would do. And for what? So that a 17-year-old kid could paint the pictures he wanted to paint and have his human rights of due process and free expression respected. For that, I jeopardized and lost everything that gave me security.

But I have never regretted it! The universe was kind to me. I landed on my feet—in law school of all places—and became a public interest lawyer.

I tell this story to impress upon you this point: courage is often the better part of freedom. If you want to make a happy and good human life for yourself and help secure such a life for others, you must be brave. Immersing yourself in the suffering of others can be heart-breaking. But just the endeavor to relieve human suffering will bring you great, great joy.

Let me end with a truly great orator’s words, words that I think are applicable to the struggle for human rights and the practice of being a public interest lawyer.

The words come from the second century C.E. Roman Marcus Tullius Cicero, and they are drawn from his essay on friendship. Cicero is responding to an argument he associates with the Epicureans, the argument that we should not befriend others, much less the poor and suffering, because they will only add their troubles to our own. This is what Cicero has to say in response:

What a magnificent philosophy! Why, they take the very sun from the sky, I should say, when they take friendship from life, for of all the gifts the gods have given us, this is our best source of goodness and happiness. What, after all, is this “freedom from care” they talk about? In appearance it is seductive indeed, but in actual fact it is something that in many circumstances deserves only contempt. For it is not in accord with sound principle to refuse to undertake any honorable proposal or course of action or, having once undertaken any such thing, to refuse to go through with it, for fear that one may lose one’s peace of mind. If we run away from trouble, we shall have to run away from virtue too, for it is impossible for virtue to avoid trouble in some degree when she shows her contempt and enmity toward things incomparable with herself. When kindness stands out against malice, when self-control stands against wantonness, bravery against cowardice . . . . And so, if pain does touch the heart of the wise person—and certainly it does, unless we are of the opinion that every vestige of human feeling has been rooted out of him or her—what earthly reason could be offered for excising friendship, root and branch, from life, for fear that it may become the cause of some slight hardship on our part? For if we remove all feeling from the heart, what difference is there not, I hasten to say, between a human being and an animal, but between a human being and a rock or a stump or anything else of that kind?

Be human beings. Go out and befriend the poor and the oppressed wherever you may find them. Identify those who impoverish and oppress them. And then make some trouble!®